

IN THE U.S. PATENT AND TRADEMARK OFFICE

In re application of

Charles TELLIER et al.

Application No. 10/522,161

Group Director

Filed September 30, 2005

METHOD FOR MAKING BIOCHIPS

PETITION TO WITHDRAW FINALITY UNDER 37 CFR 1.181

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

July 10, 2009

Sir:

Responsive to the Final Office Action mailed June 24, 2009 ("the Office Action"), applicants respectfully submit that the finality is improper and should be withdrawn.

The Office Action is a first action on the merits subsequent to the filing of a Request for Continued Examination required by the Examiner.

In a telephonic interview on January 29, 2009 with Examiner Gross, the undersigned explained that Applicants intended to file a Response along with a Declaration Under Rule 132 to establish inventorship for the claimed invention. Examiner Gross stated that the declaration would require further consideration and/or search.

As the Examiner was not willing to consider the Declaration without the filing of an RCE, and in order to both expedite prosecution and to comply with the requirements of the Patent Office, Applicants filed a Request for Continued Examination along with the Response of March 31, 2009.

The substance of this telephone interview was made of record in the Response filed March 31, 2009. See, e.g., paragraphs 1 and 2 of page 2 of the Response.

Thus, in view of the fact that Applicants were required to file the RCE for consideration of the declaration, a first action final is believed to be improper.

Withdrawal of the finality is respectfully requested.

Respectfully submitted,

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